

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





ORIGINAL

75-6070

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

*Appellee,*

*v.*

VARIOUS ARTICLES OF OBSCENE MERCHANDISE  
SCHEDULE NO. 1213,

*Appellant.*

APPENDIX.

ALFRED F. KOLLER, JR.

*Attorney for Claimant, Hurwood*

845 Third Avenue

New York, N. Y. 10022

PL 3-8756

PAUL J. CURRAN

*U. S. Attorney for the Southern Dis-  
trict of N. Y., Attorney for Ap-  
pellee, United States of America*

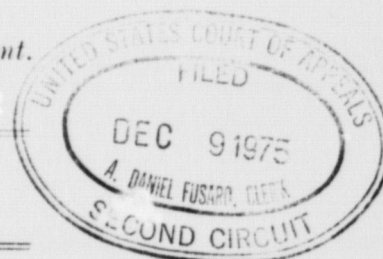
One St. Andrew's Plaza

New York, N. Y. 10007

791-1924

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P/S



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DOCKET ENTRIES

UNITED STATES COURT OF APPEALS  
For the Second Circuit

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UNITED STATES OF AMERICA,  
Appellee

v.

VARIOUS ARTICLES OF OBSCENE  
MERCHANDISE SCHEDULE NO. 1213,  
Appellant

---





DIST. OFFICE	YR.	NUMBER	MO.	DAY	YEAR	J	N/S	O	R	23	S	OTHER	NUMBER	DEM.	YR.	NUMBER
208-1	75	1381	03	20	75	1	690	1					0842		75	1381
													Wyatt, J.			

PLAINTIFFS  
U.S.A.

DEFENDANTS  
VARIOUS ARTICLES OF OBSCENE  
MERCHANDISE, SCHEDULE NO. 1213

7/25

CAUSE,

To forfeit allegedly obscene merchandise imported into the U.S.

LN

ATTORNEYS

Stuart I Parker Asst. U.S. Atty.  
U.S. Court House Foley Sq.  
N.Y. 10007 791-0024

A

<input type="checkbox"/> CHECK HERE IF CASE WAS FILED IN FORMA PAID	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
	MAR 20 1975	U.S.A.		JS-5	6-27-75
				JS-6	

DATE	NR.	PROCEEDINGS	Judge Wyatt
03-20-75	1	Filed Complaint & Issued Summons	
04-07-75	2	Filed Affidavit of mailing by Eleanor M. Suske on 4/2/75.	
04-10-75	3	Filed Warrant for Arrest with proof of publication in the N.Y. Law Journal on 4/7/75.	
05-05-75	4	Filed Claim & Answer of Daniel Eddo.	
05-05-75	5	Filed Claim & Answer of Joe Erwin.	
05-05-75	6	Filed Claim & Answer of J.M. Fickes.	
05-05-75	7	Filed Claim & Answer of Don K. Miles.	
05-05-75	8	Filed Claim & Answer of J.M. Schwartz.	
05-05-75	9	Filed Claim & Answer of W.P. Saighton.	
05-05-75	10	Filed Claim & Answer of S.P. Sweeney.	
05-05-75	11	Filed Claim & Answer of Wasolawski.	
05-05-75	12	Filed Claim & Answer of B.J. Hurwood.	
05-06-75	13	Filed Pltffs. Notice to Claimant. ret. 5/16/75 at 2:30p.m. in room 506.	
05-08-75	14	Filed Partial Default Judgment Ordered that deft. articles remaining in custody of US Marshals for which no claim has been made are condemned & forfeited to pltff. & US Marshals is directed to destroy said forfeited articles, Etc. Wyatt J. Judgment Ent. 5/8/75 Clerk. Attached in proof of publication in the N.Y. Law Journal on 4/7/75. (mailed notice)	
05-16-75	---	Trial begun - without a jury & concluded. Briefs to be submitted. Decision Reserved. Before Judge Wyatt.	
05-22-75	15	Filed Partial Judgment. Ordered that each articles listed in Schedule "A" except exhibits 4 & 4A, is forfeited & condemned as obscene, etc. & U.S. Marshal for SDNY shall destroy such forfeited & condemned merchandise & make his ret. Wyatt J. Judgment Entered 5-22-75 Clerk Entered 5-23-75 (mailed notice)	
05-22-75	16	Filed Pltffs. Findings of Fact & Conclusions of Law.	
05-30-75	17	Filed Claimant's Trial Memorandum (B.J. Hurwood)	
06-04-75	18	Filed Pltffs. Post Trial Memorandum.	
06-13-75	19	Filed Opinion #42594. There will be judgment of forfeiture, etc. of the envelope & contents claimed by Mr. Hurwood. Settle Judgment on notice. Wyatt J. (mailed notice)	
06-16-75	20	Filed True Copy of Partial Default Judgment filed on 5-8-75 with marshals ret.	
06-27-75	21	Filed Final Judgment Ordered that articles claimed by B.J. Hurwood etc. are forfeited & condemned as indicated; U.S. Marshal shall destroy said forfeited & condemned articles of merchandise & make his ret. etc. HMX Wyatt J. Judgment Ent. 6/27/75 Clerk, Entered 7/1/75. (mailed notice)	
07-25-75	22	Filed Claimant B.J. Hurwood Notice of Appeal from the Judgment dtd. 7-25-75. (mailed notice)	
Aug 19-75	23	Filed transcript of record of proceedings dated May 16-1975.	

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A.E. Thompson



4  
COMPLAINT

USA-33s-468 - COMPLAINT - Section 305 Tariff Act of 1930  
Ed. 8/5/66

SIP:rs  
75-0894

UNITED STATES DISTRICT COURT      U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK    FILED 3-20-75  
-----xS.D. of NEW YORK  
UNITED STATES OF AMERICA,

Plaintiff,

-against-

Various Articles of Obscene  
Merchandise, Schedule No. 1213,:

Defendant.

-----x

Plaintiff, United States of America by its  
attorney, Paul J. Curran, United States Attorney for  
the Southern District of New York, for its complaint  
herein, alleges upon information and belief, as  
follows:

1. Plaintiff is a corporation sovereign  
and body politic.
2. Jurisdiction is predicated upon Title  
19, United States Code, Section 1305 and Title 28,  
United States Code, Section 1355.
3. Plaintiff brings this admiralty and  
maritime claim in its own right to forfeit,



## COMPLAINT

confiscate and destroy the goods, cartons, packages and merchandise listed on Schedule "A" annexed hereto and made a part hereof (hereinafter referred to as "said goods").

4. The said goods were sought to be imported into the United States through the Port of New York on the dates indicated, by the persons named on the said Schedule "A".

5. On or about the dates indicated on the said Schedule "A" the Regional Commissioner of Customs for Region 2 encompassing the Port of New York seized the said goods on land in the Southern District of New York pursuant to Title 19, United States Code, Section 1305 and duly notified all interested persons of such seizure.

6. The said goods are in the custody of the Regional Commissioner of Customs for Region 2 whose office is located at the Customs House in the County, City and State of New York.

7. The said goods are obscene, immoral, lewd, lascivious, salacious and patently offensive within the meaning of Title 19, United States Code, Section 1305 and, therefore, are subject to forfeiture, confiscation and destruction by the

6  
COMPLAINT

plaintiff.

WHEREFORE, plaintiff prays that process of warrant for the arrest of said goods issue and that all interested persons be duly cited to answer the premises; and plaintiff demands judgment (a) declaring the said goods to be obscene within the meaning of Title 19, United States Code, Section 1305, (b) directing that the said goods be forfeited, confiscated and destroyed, and (c) for such other and further relief as this Court may deem just and proper, including the costs and disbursements of this action.

Dated: New York, New York

1975.

PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York  
Attorney for Plaintiff.

By: s/ Stuart I. Parker  
STUART I. PARKER  
Assistant United States Attorney  
Office and Post Office Address:  
United States Courthouse  
Foley Square  
New York, New York 10007  
(212) 791-0024



USA-33a-241  
SIP:rs  
75-0894

## VERIFICATION

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK )

STUART I. PARKER, being duly sworn, deposes and says that he is an Assistant United States Attorney for the Southern District of New York, and as such has charge of the above entitled action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters herein stated to be alleged on information and belief and that as to those matters he believes it to be true.

That the sources of deponent's information and the grounds of his belief are official records and files of the United States.

That the reason this verification is made by deponent and not by the United States of America, is that the United States of America is a corporation sovereign.

s/ Stuart I. Parker  
STUART I. PARKER  
Assistant United States Attorney

8  
COMPLAINT

Sworn to before me this  
19th day of March 1975

s/ Lawrence Mason

LAWRENCE MASON  
NOTARY PUBLIC, State of New York  
No. 03-2572560  
Qualified in Bronx County  
Commission Expires March 30, 1975



10  
NOTICE TO CLAIMANT

grounds the right of the United States to seize and  
forfeit the materials you have claimed in this  
action. You need not appear, either in person or by  
attorney, to have the issue of whether or not the  
goods you have claimed are obscene presented to the  
Court and you will be advised of the Court's  
decision when it is rendered.

Dated: New York, New York  
May , 1975

Yours, etc.,

PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York

By: /s/  
STUART I. PARKER  
Assistant United States Attorney

## NOTICE TO CLAIMANT

Form USA-33s-544-TRIAL NOTICE, P. 1-OLscene Merchandise

SIP:ml  
75-0894

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA,	:	
	:	<u>NOTICE TO CLAIMANT</u>
Plaintiff,	:	
	:	75 Civ. 1381
-v-	:	(IBW)

VARIOUS ARTICLES OF OBSCENE	:	
MERCHANDISE, SCHEDULE NO. 1213,	:	
	:	
Defendant.	:	

- - - - - x

PLEASE TAKE NOTICE that the trial of this action, in which you have filed a claim to certain materials, will be held before the Honorable Inzer B. Wyatt, United States District Judge, on May 16, 1975, at 2:30 p.m., in Room 506 of the United States Courthouse, Foley Square, New York, New York. At that time and place the United States will submit the claimed materials to the Court for its determination as to whether or not these materials are obscene within the meaning of 19 U.S.C. § 1305.

PLEASE TAKE FURTHER NOTICE that you may appear at the time and place of trial, in person or by an attorney, and consent on any appropriate



11  
TRANSCRIPT

ELjw

1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

:

v.

75 Civ. 1381

VARIOUS ARTICLES OF OBSCENE  
MERCHANDISE, SCHEDULE 1213

:

May 16, 1975  
4:10 P.M.

B E F O R E :

HON. INZER B. WYATT,

District Judge.

A P P E A R A N C E S :

PAUL J. CURRAN, ESQ.,

United States Attorney for the  
Southern District of New York

STUART I. PARKER, ESQ.,

Assistant United States Attorney

AFRED P. KOLLER, JR., ESQ.,

Attorney for Claimant Bernhardt Hurwood

RECEIVED  
MAY 16 1975  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

12  
TRANSCRIPT

1 eljw

2

2 THE COURT: Is there any opposition in  
3 this matter?

4 MR. PARKER: Yes, your Honor.

5 THE COURT: I have never had any case where  
6 there has been opposition if there are no movies involved.

7 MR. KOLLER: On behalf of Bernhardt  
8 Burwood, one of the recipients or addressees of one of  
9 the items complained of in the complaint.

10 THE COURT: Isn't this one of these matters  
11 where the Customs officer has seized incoming literature  
12 on the ground that it is pornographic and then they send  
13 notices?

14 MR. KOLLER: Yes, your Honor.

15 MR. PARKER: Your Honor, my name is Stuart  
16 Parker, I am an Assistant United States Attorney representing  
17 the plaintiff in this action.

18 Before we go any further, I think it might  
19 be advisable to find out if there are in fact any other  
20 claimants in the room.

21 THE COURT: I can say. United States of  
22 America versus Various Articles of Obscene Merchandise,  
23 Schedule No. 1213, 75 Civil 381.

24 Are there any other claimants here who wish  
25 to be heard, other than counsel's client who has already



1 eljw

2 given his appearance? No.

3 MR. KOLLER: Your Honor, I would request  
4 at this time at least with respect to that item in that  
5 list proposed to Mr. Hurwood, that we have an adjournment  
6 of between one and two weeks so that I might brief this  
7 matter.

8 Mr. Hurwood received this notice the week  
9 before last and he contacted my office at that time and  
10 I have been deep in some other litigation out on Long  
11 Island and I did not have a chance to brief the matter.

12 The essence of our claim, however, is not  
13 that the matter was not obscene but relates to the fact  
14 that the envelope in question was a hand addressed envelope  
15 sent from the United Kingdom to the United States via  
16 first class air mail postage and we protest the opening  
17 of this mail.

18 The reasonable cause of customs to open the  
19 mail, and it involves some constitutional issues of  
20 course dealing with the right of customs inspectors to  
21 open first class mail.

22 THE COURT: I will permit you at the end of  
23 two weeks to submit a brief. But let's make the record  
24 now so that we don't have to come back here again.

25 MR. KOLLER: I'm not so sure, your Honor, that

14  
TRANSCRIPT

1 eljw

4

2 we can make the record complete right now because I don't  
3 believe the government is prepared to come forth with  
4 their customs agent.

5 MR. PARKER: You are incorrect on that,  
6 Mr. Koller. We are prepared to proceed right now.

7 THE COURT: Yes. And then I can dispose  
8 of or at least decide in full the other items and as to  
9 your claimant client and that item, I can take your  
10 submission later. I want to avoid having to have another  
11 proceeding.

12 MR. KOLLER: I realize that. I wouldn't ask  
13 this Court for another proceeding. I think on that basis,  
14 your Honor, we could proceed right now.

15 THE COURT: All right.

16 MR. KOLLER: The only thing I would ask is  
17 that we preserve any right we may have to a three-panel  
18 Judge on constitutional issues, a panel of three judges  
19 on a constitutional issue.

20 THE COURT: Well, you can certainly have  
21 that. I won't prejudice you as to that. I doubt, as a  
22 matter of law, that you are entitled to it, but you are  
23 certainly not waiving anything by going ahead now. Let's  
24 have the trial and then you can give me your submissions  
25 later as to this one claimant. What's his name?



1 eljw

2 MR. KOLLER: Hurwood.

3 THE COURT: The reporter has it, I'm sure.

4 All right. The government may proceed.

5 MR. PARKER: Your Honor, this is an action  
6 brought pursuant to 19 U.S.C. Section 1305 seeking for-  
7 feiture of alleged obscene --

8 THE COURT: I know, I have had a number of  
9 these actions in the past.

10 MR. PARKER: Shall I just call my witness  
11 then?

12 THE COURT: Yes. You need a customs officer  
13 and then you present the material and I have to take it  
14 upstairs and look at it and then I decide.

15 MR. PARKER: I would call as my first witness  
16 Vincent Ruisi.

17  
18 V I N C E N T R U I S I , called as a  
19 witness, being first duly sworn, testified as  
20 follows:

21 DIRECT EXAMINATION

22 BY MR. PARKER:

23 Q Mr. Ruisi, by whom are you employed?

24 A United States Customs Service.

25 Q Are you employed in a particular section?

16  
TRANSCRIPT

1 eljw

Ruisi - direct

6

2 A Imports, Compliance Branch, Prohibited  
3 Imports Section.

4 Q For how many years have you worked for the  
5 United States Customs Service?

6 A Approximately fifteen years.

7 Q For how many years have you been employed  
8 in the Imports Compliance, Prohibited Imports Section?

9 A Approximately six.

10 Q What kind of work is done by that section?

11 A We enforce 19 U.S.C. 1305, deals with obscenity  
12 and lottery mails.

13 Q Mr. Ruisi, are you familiar with the Customs  
14 Service procedures regarding the search of obscene material  
15 from the time that that material enters the United States?

16 A Yes, I am.

17 Q Could you briefly tell us about it?

18 A Its first entry is at JFK Airport located  
19 in Queens. The Postal representatives do the initial  
20 screening and refer what they feel contains doubtful or  
21 obscene material and refers it to the General Post Office  
22 located on 32nd Street and Eighth Avenue.

23 Q Do they open any mail at Kennedy Airport?

24 A No mail is opened at that point, no.

25 Q Can you tell us what happens at the Post Office



17  
TRANSCRIPT

1 eljw

Ruisi - direct

7

2 in Manhattan?

3 A The Post Office in Manhattan, we have two  
4 Customs representatives attached to the Prohibited Import  
5 Section who rescreen all material referred to the Customs  
6 Service for eliminating what we feel may not be dutyable  
7 or contain objectionable material, which we feel is personal  
8 mail.

9 At that point it's released and the Customs  
10 representatives refers what he feels should be seized to  
11 Six World Trade Center.

12 Q With regard to obscene, alleged obscene  
13 material, do you know how he decides what to send over  
14 to you?

15 A I have an idea of how he works it. I imagine  
16 it's basically the same as I do. Thickness of envelopes --

17 MR. KOLLER: Objection. Is he talking for  
18 things which he does or criteria which he uses or which  
19 someone else uses?

20 THE COURT: He is saying that he thinks that  
21 this other man uses the same criteria that he does.

22 MR. KOLLER: But now he is testifying to  
23 what his criteria are.

24 THE COURT: I assume so. I will permit it.

25 A Yes. We use country or origin, thickness of

18  
TRANSCRIPT

eljw                      Ruisi - direct

7 A

envelopes, the address, if it is an Addressograph machine, they use individuals to address envelopes, the color of the envelope, is all the criteria that are referred to.

Q            Have you ever been over at the Post Office at 32nd Street?

A            Yes, I have, on several occasions.

Q            Have you observed the Customs inspectors over there in their duties?

A            Yes, I have.

Q            And are you familiar with the standards that they use for segregating alleged obscene mail?

A            Yes, I am familiar with that.

Q            Are they the same as you have gone over now?

A            On a much larger scale, the same as I have gone over, yes.

Q            Do they open any mail at the Post Office?

A            The Customs representative will open mail if he finds that it's new to him, a new return address or different type envelope that he is unfamiliar with, he is in the authority to open mail articles at that point also.

Q            Does he send over both the mail which he's opened and which he hasn't opened which he believes to be obscene?



19  
TRANSCRIPT  
Ruisi - direct

8 .

1 eljw

2 A That is exactly what he does, yes.

3 Q He sends that to your offices?

4 A Yes.

5 Q Where are they?

6 A We are located at Six World Trade Center,  
7 New York, New York.

8 Q When the mail reaches you, your office,  
9 what do you do?

10 A I segregate different countries. I basically  
11 take for obscenity Denmark, Sweeden, the Netherlands,  
12 Germany and Great Britain.

13 Q Yours is the third segregation of mail, then?

14 A At that point this is the third time that  
15 it's being resegregated, yes.

16 Q And some of the mail that you receive has  
17 been opened and some is unopened, is that right?

18 A In some cases that is true, yes.

19 Q Do you send any of the mail which you receive  
20 on to the recipient unopened?

21 A Very often I do, for various reasons. Mostly  
22 it's due to the thickness. If we feel that it may contain  
23 personal mail we will not open at that point.

24 Q Once you have the alleged obscene material  
25 segregated, what do you do then?

1 eljw

2 A Once we match up apparent commercial shipments  
3 we proceed in opening them to identify the contents.

4 Q Can you tell me how you determine whether  
5 the contents of an envelope or a package are obscene?

6 A We have an index system that we list the  
7 different titles of magazines according to the date that  
8 they came in and the date that the Customs Service  
9 decides that it's considered obscene. We list it and  
10 from that point if we can't remember the name of if we  
11 happen to forget a particular name, we refer to the index  
12 system to locate it.

13 Q In the course of a week, how many pieces of  
14 mail do you seize?

15 A We seize approximately 1,000 a month.

16 Q In the last year, for example, how many times  
17 have you been wrong, that is, you have seized a piece of  
18 mail --

19 MR. KOLLER: Objection.

20 THE COURT: On what ground?

21 MR. KOLLER: Your Honor, it is immaterial  
22 and irrelevant how many times he's been wrong or how many  
23 times he's been right. We are trying to determine here  
24 what the facts were in this particular case.

25 THE COURT: Yes, I wonder sometime why are we



1 eljw

2 going into all this generality.

3 Just what do you do here? Can't we get  
4 to it?

5 MR. PARKER: All right.

6 THE COURT: And there is no doubt as to  
7 99.99. There is only one complaint here.

8 Q Mr. Ruisi, once an article is determined to  
9 be obscene, what happens then?

10 A Once the contents is identified we issue a  
11 seizure number to each addressee and the clerk types up  
12 a letter notifying the addressee that the material is  
13 being seized. We make up a seizure report and wait for  
14 a reply.

15 Q So then the seizure number is used to identify --

16 A Seizure numbers are used to identify the  
17 individuals.

18 Q Mr. Ruisi, I show you Government Exhibit 10  
19 for identification.

20 A I am looking at Government Exhibit 10.

21 Q Can you identify that?

22 A Yes, I can. This is --

23 MR. KOLLER: Has been already marked in  
24 evidence, your Honor?

25 MR. PARKER: This has been pre-marked.

## TRANSCRIPT

Ruisi - direct

11

1 eljw

2 I will show it to you before I offer it into evidence.

3 You have a copy of it.

4 Q Can you identify that?

5 A Yes, I can. This is Schedule 1213. It is  
6 prepared on a weekly basis notifying the United States  
7 District Court, the Southern District Court of the material  
8 that we have taken for the week.

9 Q So that it contains a list of the material  
10 that you seized for --

11 A For the week of March 12, 1975.

12 Q Ending March 12th?

13 A Yes.

14 THE COURT: It's offered in evidence. Have  
15 you seen it?

16 MR. KOLLER: I have seen a copy of this,  
17 your Honor, without the penciled in "Schedule A" or --

18 THE COURT: Is there any objection?

19 MR. KOLLER: There is no objection.

20 THE COURT: Without objection it will be  
21 received. Mark it.

22 (Government Exhibit 10 received in  
23 evidence)

24 Q Mr. Ruisi, I hand you now Government Exhibits  
25 1 through 9-A --



23  
TRANSCRIPT  
Ruisi - direct

12

1 eljw

2 MR. KOLLER: Your Honor --

3 THE COURT: Look, don't make any trouble,  
4 just sit quietly and we can shorten that.

5 MR. KOLLER: I was just going to concede  
6 we are only talking about one of those things.

7 THE COURT: I had that in mind. Is this  
8 the material that is relevant to this schedule?

9 THE WITNESS: Yes, your Honor, it is.

10 THE COURT: All of it?

11 THE WITNESS: Yes, your Honor.

12 MR. PARKER: No, your Honor, those are only  
13 those articles for which claims have been made. You  
14 signed a partial default on March 7th. These are the  
15 remaining materials which were seized.

16 THE COURT: All right. Which is the material  
17 that is claimed by counsel's client?

18 MR. PARKER: That is Exhibit 4 for identifi-  
19 cation.

20 THE COURT: Let's take it out. You want to  
21 offer the rest of it?

22 MR. PARKER: Yes.

23 THE COURT: What exhibits are they?

24 MR. PARKER: That is Exhibit 1, consisting  
25 of alleged obscene material, Exhibit 1-A, its envelope,

24  
TRANSCRIPT

1 eljw

Ruisi - direct

13

2 through 9, the same breakdown, the number is the material,  
3 the envelope is A.

4 THE COURT: All right. What's the exhibits  
5 that relates to counsel's complaint?

6 MR. PARKER: 4 and 5-A.

7 THE COURT: All right. The others are  
8 received in evidence. Mark them, Mr. Clerk.

9 MR. KOLLER: No objection, your Honor.  
10 You can put 4 and 5-A in also.

11 THE COURT: All right. Let's offer that  
12 separately.

13 Q Mr. Ruisi, I hand you Exhibits 4 and 4-A.

14 (Government Exhibits 1 through 3-A, and  
15 5 through 9-A were received in evidence)

16 THE COURT: Now you want to deal with 4-A?

17 MR. PARKER: Yes, your Honor.

18 THE COURT: Is that one of the articles  
19 seized, Officer?

20 THE WITNESS: Yes, your Honor.

21 THE COURT: Any objection.

22 MR. KOLLER: No, your Honor.

23 THE COURT: Without objection that will be  
24 received. 4 and 5-A relate to the claimant, Mr. Hurwood.

25 (Government Exhibits 4 and 4-A were received



25  
TRANSCRIPT

1 eljw

Ruisi - direct/cross/direct 14

2 in evidence)

3 THE COURT: Anything else?

4 MR. PARKER: That is the end of the exhibits,  
5 your Honor.

6 THE COURT: Any cross examination?

7 MR. KOLLER: Yes, your Honor. If I may  
8 see the last Exhibit, 4 and 5-A.

9 CROSS EXAMINATION

10 BY MR. KOLLER:

11 Q Mr. Ruisi --

12 MR. PARKER: This is on the voir dire, be-  
13 cause I had not finished my questioning.

14 THE COURT: Oh, I thought you had finished.

15 MR. PARKER: I'm sorry, your Honor, I mis-  
16 understood.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. PARKER:

19 Q Mr. Ruisi, did you open the envelope Exhibit  
20 4-A?

21 A This particular envelope was opened by  
22 myself. My handwriting is on the envelope.

23 Q And when you opened an envelope you would  
24 place a notation on it?

25 A Yes, I put the initials IA, indicating

1 eljw  
2 illustrated advertising in this particular instance.

3 Q What were your reasons for suspecting, for  
4 opening this envelope?

5 A The feel of the feel, the handwritings match  
6 others in the same type shipment, the country of origin,  
7 the way it feels on the edges, it feels other than personal  
8 mails that might have been written, a letter or some  
9 sort of nature of that way.

10 MR. PARKER: I have no further questions,  
11 your Honor.

12 CROSS EXAMINATION

13 BY MR. KOLLER:

14 Q Mr. Ruisi, you are an employee of the United  
15 States government, you have told us. What is your GS  
16 grade?

17 A Six.

18 Q Does your department keep a list of addressors,  
19 or senders of mail?

20 A No, we do it each shipment that comes in we  
21 try to match up. There are no lists kept.

22 Q Do you keep a list of addressees or recipients  
23 of mail?

24 A Other than the list that is used for the return  
25 address, for the U.S. Attorney, no.



1 eljw

2 Q If you look at Government Exhibit 4-A, how  
3 would you describe that?

4 THE COURT: What difference does it make?  
5 It's in evidence. I can see it myself.

6 Q Would it be fair to characterize that as  
7 a first class letter?

8 A It is a first class letter.

9 Q How is it sent?

10 A Air mail.

11 Q From where?

12 A Great Britain.

13 Q Would that be sufficient to indicate to you  
14 that this was pornographic or might possibly contain  
15 pornographic material?

16 A Just appearance or --

17 Q Just from those items we have said, the fact  
18 that it is a first class letter, it comes from Great  
19 Britain and just from those facts.

20 A As a single piece, you would have no way  
21 of knowing.

22 Q Would you have any way of knowing that this  
23 piece of first class mail contained pornograph just based  
24 on its outer appearance, on a single piece basis?

25 A On its outside appearance there is no way

1 eljw

2 of telling. You may suspect it contains other than per-  
3 sonal mail. You know it contains other than a letter  
4 but you have no way of knowing that it was obscenity  
5 in it other than opening it, no.

6 Q Do you have any sort of warrant in your  
7 possession when you open this?

8 A No.

9 Q Do you have any sort of Court order allowing  
10 you to open this?

11 A I have no Court order, no.

12 MR. KOLLER: Let the record reflect that the  
13 witness is checking with counsel.

14 Q Do you have any reason to believe that the  
15 sender of this, one J. Hampton, is a purveyor of pornograph,  
16 other than having once opened a mail?

17 A Well, they come in in bundles of 150, 200  
18 and you must verify your feelings and your thoughts.  
19 One has to be opened along the line somewhere in order  
20 to check it.

21 Q Is that one which is opened, the first one,  
22 is that done pursuant to a Court order?

23 A No.

24 THE COURT: I take it, Officer, that what  
25 you are saying is that this envelope was one of many --



1 eljw

2 THE WITNESS: Many, yes, your Honor.

3 THE COURT: Similar?

4 THE WITNESS: Yes, your Honor.

5 THE COURT: Knew it was from the same sender?

6 THE WITNESS: Yes, your Honor.

7 THE COURT: And because there are so many  
8 that came together at the same time you assumed that it  
9 was a commercial solicitation?

10 THE WITNESS: Yes, your Honor.

11 THE COURT: Or mailing, and therefore in  
12 order to determine whether it was pornographic solicitation,  
13 you opened it?

14 THE WITNESS: Yes, your Honor.

15 THE COURT: Have I put it right?

16 THE WITNESS: You have put it exactly correct.

17 THE COURT: Do we need anything more?

18 MR. KOLLER: I don't believe so, your Honor,  
19 with respect to that exhibit.

20 Q When you have opened the contents or you  
21 have examined the contents of the envelope, do you make  
22 the determination of whether it is pornographic?

23 THE COURT: No, I make that determination.  
24 He makes the determination whether to seize it and submit  
25 it to the Court.

1 eljw

2 Q To seize.

3 A I make the determination whether it should  
4 be seized or not, correct.

5 Q Did you make the determination that this  
6 particular item should be seized?

7 A My handwriting is on the envelope. This  
8 particular one I decided, yes.

9 Q On what basis, what is the basis for your --  
10 THE COURT: No, I don't think I will permit  
11 that. If he is wrong, I have to determine it or a higher  
12 Court.

13 If he is right, what difference does it  
14 make?

15 MR. KOLLER: Yes, your Honor. I think I  
16 have covered it. I was going to take another attack but  
17 I don't think it's quite that relevant to the case.

18 THE COURT: All right. Do you need that?

19 MR. KOLLER: No, your Honor.

20 THE COURT: Do you need it for your brief?

21 MR. KOLLER: No, I don't think I do.

22 THE COURT: All right. Anything else?

23 MR. PARKER: Your Honor, if I may, at this  
24 time I would like to hand up the government's trial  
25 memorandum and proposed findings of fact and conclusions



31  
TRANSCRIPT  
Hurwood - direct  
Ruisi - cross

20

1 eljw

2 of law.

3 MR. KOLLER: I'd like to put a witness on,  
4 your Honor.

5 THE COURT: How long is it going to take?

6 MR. KOLLER: Two minutes..

7 THE COURT: All right. Thank you very  
8 much, Officer.

9 (Witness excused)

10  
11 B E R N H A R D T J . H U R W O O D , called  
12 as a witness, being first duly sworn, testified  
13 as follows:

14 DIRECT EXAMINATION

15 BY MR. KOLLER:

16 Q Mr. Hurwood, what is your occupation?

17 A I am a writer.

18 Q How long have you been engaged in the pro-  
19 fession of writing?

20 A Since about 1962.

21 Q In rough terms, how many publications have  
22 you written or contributed to?

23 A I have had about 50 books published and hundreds  
24 of magazine articles. I can't even keep track.

25 Q Would it be fair to say that some of your

1 eljw

2 articles or books tend to be classified by certain elements  
3 as in a pornographic or sexual vivid area?

4 A I have written about sexuality in history  
5 and for the laymen insofar as medical and psychological  
6 aspects are concerned, yes. So definitely I have written  
7 about explicit sexuality, but always within a specific  
8 context.

9 Q Have any of your publications ever been  
10 banned by any Court or on the basis of being pornographic?

11 A No.

12 Q Have any of your publications ever been  
13 seized by the U.S. Postal authorities, to your knowledge?

14 A Never.

15 Q Do you receive information from various  
16 sources regarding material available in the area of  
17 pornography?

18 A Oh, yes. Particularly right now.

19 Q What do you mean, right now?

20 A Well, at the moment I am working on a rather  
21 large book which deals with the whole subject of sexuality  
22 throughout history from ancient times to the present, so  
23 I am covering everything from the ancient erotic art  
24 through contemporary sex therapy, magazine, publications,  
25 literature, art.



1 eljw

2 Q Has this publication or this work that you  
3 are working on right now, has that been given a name?

4 A Yes. The title is the Whole Sex Catalogue.

5 Q Would it be fair that you were commissioned  
6 by a publisher to write this?

7 A I was approached by a publisher and given  
8 a contract to do this book, yes.

9 Q Is it vital to your work that you receive  
10 information regarding items of pornography, items that  
11 are sometimes deemed pornographic or items of sexual  
12 interest?

13 A Oh, it's essential because I am discussing  
14 the subject of pornography also from a legal and from a  
15 psychological standpoint.

16 Q Would it be fair to say that the interference  
17 by the Postal authorities or Custom authorities with mail  
18 coming into your office would be detrimental to your work?

19 A Absolutely, because anything that is left  
20 out leaves my work apparently lacking in the eyes of anyone  
21 who is going to criticize it or review it. I want it to  
22 be as complete as it possible can be.

23 MR. KOLLER: No further questions.

24 THE COURT: Any cross?  
25

1 eljw

2 CROSS EXAMINATION

3 BY MR. PARKER:

4 Q Mr. Hurwood, are you also in the publishing  
5 business?

6 A No, I am a freelance writer.

7 Q Are you in any way affiliated with a concern  
8 called Pinnacle Books, Inc.?

9 A Pinnacle Books is my publisher and because  
10 of the extremely large nature of this project they have  
11 provided me with facilities to keep and store my material  
12 while working on this project.

13 Q And they would publish the Whole Sex Catalogue?

14 A Yes, it's going to be published in October.

15 Q Would you give me the title of some of the  
16 other books that they have published? What type of  
17 books?

18 MR. KOLLER: Objection. There is no  
19 foundation. This is going a little bit far afield.

20 THE COURT: I will permit it. There is no  
21 jury here.

22 A Some of the titles of the other books that  
23 he published, the Great Escape, which is a non-fiction  
24 story about the escapes of a number of Jewish refugees  
25 from Nazi Germany; they have a number of series, they are



35  
TRANSCRIPT  
Hurwood -cross

24

1 eljw

2 doing some of the Sherlock Holmes books, the Solar Cons,  
3 which is a successor to Holmes, they do the Horatio  
4 Hornblower series, they are doing a series of Dracula  
5 books, they do a series of joke books --

6 THE COURT: Isn't that enough?

7 MR. PARKER: I think so. Thank you.

8 THE COURT: Anything else?

9 MR. KOLLER: No, your Honor.

10 THE COURT: Anything else from the government?

11 MR. PARKER: That's all, your Honor.

12 THE COURT: You have no more cross examination?

13 MR. PARKER: No more cross.

14 THE COURT: Thank you, sir. You may step  
15 down.

16 (Witness excused)

17 MR. KOLLER: May I advise the Court that  
18 we concede that the article submitted is pornographic and  
19 we are not raising that issue at all.

20 If your Honor please, do you wish a date  
21 for the submission of that brief?

22 THE COURT: You said you wanted two weeks.

23 MR. KOLLER: Two to three, your Honor. I  
24 would give it in two if pushed.

25 THE COURT: I have got to decide --

1 eljw

2 MR. KOLLER: I understand. You want to  
3 get rid of it too.

4 THE COURT: It's not that, but I am going  
5 away. This is the 16th. Two weeks would be the close of  
6 business on the 30th.

7 MR. KOLLER: Fine, your Honor. I will  
8 have a brief by then.

9 THE COURT: Because then I suppose the  
10 government would want two or three days to say something.

11 MR. PARKER: Yes, your Honor. I would like  
12 a few days to comply.

13 THE COURT: All right. Close of business  
14 on Friday, May 30th. What about the government?

15 MR. KOLLER: Give them as short a fuse as  
16 possible, sir -- I am only joking.

17 MR. PARKER: Your Honor, if I could have  
18 until the following Thursday.

19 THE COURT: All right. Close of business  
20 on the 5th.

21 MR. PARKER: There is one other bit of  
22 business.

23 The Supreme Court has said in these cases  
24 that they should be completed within sixty days unless  
25 there is delay by one of the claimants.



1 eljw

2 MR. KOLLER: We have delayed, your Honor.

3 MR. PARKER: I'm not concerned about that,  
4 but if I may, I would like to urge you to decide as to  
5 the rest of the materials.

6 THE COURT: Oh, we can do that early next  
7 week, and you can enter an order on that. I take it  
8 the problem you will be raising is that case that I  
9 remember where somebody had a movie in his home which  
10 was admittedly pornographic and the Supreme Court said  
11 as long as it was used in the home, is that the point?

12 MR. KOLLER: That is one of the points, your  
13 Honor. The other is, it's first class mail and it's  
14 private between the sender and the addressee.

15 THE COURT: All right. I have an open  
16 mind.

17 (Time noted: 4:45 p.m.)

18  
19  
20 ooo  
21  
22  
23  
24  
25

38  
TRANSCRIPT

27

WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Victor Ruisi	5 14	14		
Bernhardt J. Hurwood	20	23		

EXHIBIT INDEX

<u>Government</u>	<u>Identification</u>	<u>In Evidence</u>
1 through 3-A		13
4-A , 5 through 9-A		13



## OPINION

UNITED STATES OF AMERICA,  
Plaintiff,

-v-

VARIOUS ARTICLES OF OBSCENE  
MERCHANDISE, SCHEDULE NO. 1213,  
Defendant.

75 Civ. 1381

The trial of this action took place on May 16, 1975.

The action is under 19 U.S.C. § 1305 for the forfeiture of articles seized by the customs office at New York as "obsc ene".

There is one claimant, Mr. B.J. Hurwood, who contests the action, who appeared by counsel at the trial, and who testified.

Mr. Hurwood was the addressee of an airmail envelope from England, addressed with pen and ink printing. A customs officer examined the envelope and suspected that it contained obscene material. This was on the basis that the writing (printing) matched others in a shipment, on "feel", on country of origin, etc. The officer opened the envelope and found that it contained illustrated advertising material for obscene publications available by mail from Sweden. Claimant concedes that the material is "obscene" within the meaning of 19 U.S.C. § 1305 (Trial Memo, p. 12; SN 3, 24).

The claimant is a serious and responsible writer who has a professional interest in sex and wishes to have access to all material on the subject. He does not know the sender of the envelope here in question and does not appear to have solicited the mailing.

The point made for claimant is that the search and seizure of the first class mail addressed to him was illegal and a denial of due process. Claimant asks that the envelope and its contents be turned over to him.

38b  
OPINION

The envelop seized was one which came from outside this country; the seizure was by a customs officer at a customs office; the seizure was directed by 19 U.S.C. § 1305.

There is no statutory prohibition against a search of first class mail coming from outside the country. The statute (39 U.S.C. § 3623 (d)) prohibiting the opening of first class mail is only applicable to such mail "of domestic origin".

The question remains whether all first class mail envelopes coming into the country can be opened for inspection by a customs officer or whether such envelopes can only be opened for inspection if the officer has reasonable cause to suspect a violation of the import laws, more particularly in this case, 19 U.S.C. § 1305. Is the Fourth Amendment applicable to searches of first class mail by customs officers at the border? A recent decision of the Seventh Circuit Court of Appeals is that all first class mail from outside the country may be searched by customs officers. United States v. Odland, 502 F.2d 148, cert. denied, 419 U.S. 1088 (1974) This decision seems correct to me. See also United States v. Doe, 472 F.2d 982 (2d Cir.), cert. denied, 411 U.S. 969 (1973)

In this District, Judge Duffy appears to have decided that opening a first class letter by a customs officer can only be justified if he has a "suspicion based on reason". United States v. Various Articles, etc. 363 F. Supp. 165, 168 (1973) With this decision of a scholarly colleague, I disagree, but if Judge Duffy be right (as he well may be), there is here a showing that the customs officer did in fact have a "suspicion based on reason".

There will be judgment of forfeiture, etc. of the envelope and contents claimed by Mr. Hurwood.

Settle judgment on notice.

Dated: June 12, 1975

INZER B. WYATT  
United States District Judge



## FINAL JUDGMENT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC  
Filed  
6-27-75  
SDNY

UNITED STATES OF AMERICA,

Plaintiff,

FINAL JUDGMENT

-v-

75 Civ. 1381 (IBW)

VARIOUS ARTICLES OF OBSCENE  
MERCHANDISE, SCHEDULE NO. 1213,

Defendant.

-----

A trial having been held in this action on May 16, 1975 with respect to each of the articles for which claims have been filed as listed in Schedule "A" annexed hereto, and one claimant, B.J. Hurwood, having appeared, and a judgment having been entered on May 22, 1975 with respect to those articles not claimed by B.J. Hurwood, and the Court having rendered a decision on June 12, 1975 with respect to those articles claimed by B.J. Hurwood, it is hereby

ORDERED, ADJUDGED and DECREED that the articles claimed by B.J. Hurwood listed in Schedule "A" annexed hereto are forfeited and condemned as obscene in violation of 19 U.S.C. §1305, and it is further

ORDERED, ADJUDGED and DECREED that the United States Marshal for this District shall destroy

## FINAL JUDGMENT

said forfeited and condemned articles of merchandise and shall make his return according to law, but such destruction of forfeited and condemned articles shall not take place until this matter has been appealed or until the time for such appeal has expired.

DATED: New York, New York  
June 25, 1975

/s/ INZER B. WYATT  
UNITED STATES DISTRICT JUDGE

JUDGMENT ENTERED: 6-27-75

s/ RAYMOND F. BURGHARDT  
CLERK

A TRUE COPY  
RAYMOND F. BURGHARDT, Clerk

By s/ B WASSERMAN  
Deputy Clerk



41  
NOTICE ON APPEAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
-----

UNITED STATES OF AMERICA,  
  
Plaintiff,

Civil Action  
No. 75 Civ. 1381 (IBW)

NOTICE OF APPEAL

-v-

VARIOUS ARTICLES OF OBSCENE  
MERCHANDISE, SCHEDULE NO. 1213,

Defendant.  
-----

Notice is hereby given that B.J. HURWOOD,  
claimant of certain items included in Defendant's  
Schedule 1213, hereby appeals to the United States  
Court of Appeals for the Second Circuit from the  
Judgment dated June 25, 1975 and entered on June 27,  
1975, ordering, adjudging and decreeing those articles  
claimed by claimant B.J. HURWOOD to be forfeited,  
condemned and destroyed as obscene merchandise.

DATED: New York, New York  
July 24, 1975

s/ ALFRED F. KOLLER, JR.  
ALFRED F. KOLLER, JR.  
Attorney for Claimant,  
B.J. HURWOOD  
Office and P.O. Address  
845 Third Avenue  
New York, New York 10022  
(212) PLaza 3-8756

## NOTICE ON APPEAL

TO: PAUL J. CURRAN  
U.S. Attorney for the  
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United States Court of Appeals  
Second Circuit  
One Foley Square  
New York, New York



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U. S. ATTORNEY  
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Attorney for